

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN D. CERQUEIRA,

Plaintiff,

v.

AMERICAN AIRLINES, INC.,

Defendant.

CIVIL ACTION NO.: 05-11652 WGY

**ASSENTED-TO MOTION FOR EXAMINATION OF THE PLAINTIFF PURSUANT TO
RULE 35(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Pursuant to Rule 35(a) of the Federal Rules of Civil Procedure, defendant American Airlines, Inc. ("American"), with the assent of plaintiff John D. Cerqueira ("Cerqueira"), hereby requests that the Court enter an Order permitting an examination of the plaintiff, as follows:

1. The plaintiff alleges that he has suffered serious psychiatric injuries as a result of events surrounding an American flight on December 28, 2003.
2. The parties agree that the nature, extent and cause of plaintiff's alleged psychiatric injuries is in controversy.
3. Plaintiff will assent to an order for a mental examination pursuant to the following conditions:
 - a. Plaintiff shall be examined by Martin J. Kelly, M.D. at 2:00 p.m. on April 3, 2006, at Dr. Kelly's offices located at 850 Boylston Street, Suite 303, Chestnut Hill, Massachusetts 02459. No one other than the plaintiff and Dr. Kelly shall attend, observe, or participate in the examination.

- b. The examination will be a standard psychiatric examination consisting of the taking of a standard medical and psychiatric history, a personal interview, and the administration of a standardized psychological test, the identity of which has been revealed to plaintiff's counsel. The parties have agreed that the identity of the standardized psychological test will not be disclosed to the plaintiff prior to its administration. The examination is expected to consist of approximately two and one-half hours of interview and one and one-half hours of testing. The total examination will last no more than four and one-half hours.
- c. The plaintiff will not be required to remove his clothing and no physical examination or physically invasive procedures shall take place.
- d. The examination shall be conducted in a manner consistent with all applicable professional standards and in accordance with current psychiatric medical practice, utilizing sensitivity, civility and attention to plaintiff's well being. The examining physician will not pursue information unrelated to the purpose of the examination and will not utilize improper, unconventional, or potentially harmful examination techniques.
- e. The information obtained from the examination and all resulting records, reports, and test results shall be treated as confidential information subject to the protective order entered in this case, and may be used only for purposes of this litigation.
- f. The examining physician shall produce a detailed written report setting forth the examiner's findings, including results of all tests, and all diagnoses made

or conclusions drawn. A copy of all reports, records, and test results shall be produced to plaintiff's counsel at the same time such information is disclosed to defendant's counsel.

g. The cost of the examination shall be borne by defendant.

WHEREFORE, American Airlines, Inc., with the assent of John D. Cerqueira, respectfully requests that this Honorable Court allow the instant motion.

Respectfully submitted,
AMERICAN AIRLINES, INC.
By Its Attorneys,

/s/ Amy Cashore Mariani
Michael A. Fitzhugh, BBO #169700
Amy Cashore Mariani, BBO #630160
FITZHUGH, PARKER & ALVARO LLP
155 Federal Street, Suite 1700
Boston, MA 02110
(617) 695-2330

Assented to by:
JOHN D. CERQUEIRA
By His Attorney,

/s/ Erica Abate Recht
Erica Abate Recht, BBO #641452
Birnbaum & Godkin LLP
280 Summer Street
Boston, MA 02110-1108
(617) 307-6160

CERTIFICATE OF SERVICE

I hereby certify that I filed the above document using the Court's Case Management/Electronic Case Filing System and have served the above document upon all counsel of record pursuant to the Administrative Procedures Governing the Filing and Service by Electronic Means on March 14, 2006.

/s/ Amy Cashore Mariani
Amy Cashore Mariani